IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.923 OF 2003

IN

APPEAL FROM ORDER (STAMP) NO.24367 OF 2003

Spirax Marshall Limited ...Applicants

Versus

JM Steamcon Pvt.Limited ...Respondents

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Mr.V.S.Gokhale for Applicants.

Mr.Himanshu W.Kane for Respondents.

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CORAM: A.M.KHANWILKAR, J.

APRIL 20, 2006.

P.C.

1. Heard Counsel for the parties. Perused the Application. Although this Application is opposed by the Respondents on the argument that the explanation offered is not sufficient cause, in my opinion, however, the same will have to be allowed in terms of prayer clause (a). This is so because the initial time spent by the Applicants in collecting the certified copy is ascribable to the clerk of the Advocate before the Trial Court.

After the certified copy was received, the papers were forwarded to the Advocate on record for the Applicants at Mumbai, who in turn, asked for further papers. That letter was sent by the Advocate on record on 30th April 2003. However, the Advocate on record was not attending the Court till 23rd June 2003 as mentioned in the application on affidavit. In other words, Applicants were not able to pursue the matter either on account of the mistake of the Advocate before the Trial Court or his Office and the latter part on account of the Advocate on record before this Court. The Applicants thereafter have immediately taken steps to comply with necessary formalities. Thereafter, present Application came to be filed on 30th July 2003. Indeed, better particulars could have been provided in the Application. However, for the mistake of the Advocate, the litigant should not suffer, for which reason, I am inclined to allow this Application in the interest of justice in terms of prayer clause (a) on condition that the Applicants shall pay cost to the Respondents quantified at Rs.5,000/- (Rupees Five Thousand) within two weeks from today.

A.M.KHANWILKAR, J.